

Claimant alleges a series of accidental injuries to his low back beginning June 5, 1996 and continuing through his last day of work with respondent on approximately September 1, 1996. Respondent contends claimant did not timely advise respondent of any accidental injury and further alleges that claimant suffered an intervening injury while putting in a hardwood floor for a client, Virginia McFarland, subsequent to his termination of employment with respondent.

Claimant originally began experiencing discomfort in January 1996. Claimant claims to have notified respondent's owner Kevin Trembly of his ongoing back problems and further testified that Mr. Trembly was the person responsible for referring claimant to Dennis W. Miller, D.C., a local chiropractor who provided treatment to claimant's low back for several months. He continued receiving treatments from Dr. Miller off and on through the end of his employment with respondent. In the fall of 1996 he was referred to Revis C. Lewis, M.D., a local neurosurgeon. This testimony of the claimant is uncontradicted evidence, not improbable or unreasonable and may not be disregarded unless shown to be untrustworthy. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). There is no evidence in the file contradicting claimant's chronological history of the events including the claimant's referral to the chiropractor by Mr. Trembly.

K.S.A. 44-520 requires notice of the accident to the employer within 10 days after the date of accident stating the time, place, and particulars thereof, except that "actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary." The uncontradicted testimony of claimant that he advised respondent's owner, Mr. Trembly, on several occasions of his ongoing back problems and their association with his employment is sufficient to show that respondent had knowledge of claimant's accident and thus the notice required under K.S.A. 44-520 was satisfied. Claimant's testimony is also sufficient to convince the Appeals Board that he suffered accidental injury arising out of and in the course of his employment with respondent on the dates alleged. This testimony is also sufficient to overcome respondent's contention that claimant suffered an intervening injury or, in the alternative, was uninjured at the time of his employment with Virginia McFarland.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order by Administrative Law Judge Steven J. Howard, dated April 29, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Daniel L. Smith, Overland Park, KS
James E. Martin, Overland Park, KS
Terri Z. Austenfeld, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director